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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,505	05/15/2001	Naoaki Niwa	D-1082	7890

32628 7590 10/27/2005

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EXAMINER

NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/854,505

Applicant(s)

NIWA, NAOAKI

Examiner

Freda A. Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-5 and 7-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is in response to a communication filed September 26, 2005 wherein:

The applicant has amended claims 1, and 8-9;

Claim 6 has been canceled;

No claims have been added; and

Claims 1-5 and 7-16 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rive in view of Nguyen (Patent Number 6,556,894).

1. In claims 1, 3, 5-8, and 16, Rive discloses that the corrective operation can be performed remotely, for example using a network communications over a network (e.g., the Internet) by a support service. Rive further discloses that to this end, a remote support service may establish a network connection to the computer system 50 (e.g., a TCP/IP connection via a dialup or DSL modem) and communicate with a client application program installed on the computer system to remotely take control of operations of the computer system 50 (col. 11, lines 55-63). Rive further discloses that in one embodiment, where the computer system is leased, the computer system and the support provided at step 206 may be provided for a fixed monthly fee, or other periodic fee, or a one-time lump sum payment (col. 15, lines 23-32). Rive et al. further

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discloses that for example, the end user may have purchased a computer system outright, and may pay a monthly subscription fee for only various applications installed on the computer system as well as for technical support on a month to month basis; alternatively, the end user may pay a periodic lease and subscription fee to the provider for the lease (or rental) of the computer equipment, the applications installed thereon, and technical support for both the computer system hardware and the installed application software; and in a further embodiment, the end user may pay an up-front lump-sum payment for the computer hardware and/or the applications, and pay a reduced subscription fee for technical support with respect to the computer system and installed software (col. 18, lines 33-46). Rive still further disclose that a fourth aspect of the support service commences at step 218, with a user request that a new application, or other software component, be installed upon the supported computer system 50; and at step 220, the support service makes a determination as to whether the relevant application or other software component is supported. If not, the user is then advised to install the application or software component within the unsupported partition 56, with the understanding that no technical support for this application is provided and should the second partition become corrupted or experience a failure, only corrective actions described above at steps 212 and 214 may be executed, wherein the content of the unsupported partition 56 is restored to an original state (col. 16, lines 18-34).

Rive does not disclose connecting the treating apparatus to a server on a seller through a communication line. Nguyen discloses that the host computer 2 is connected to the measuring apparatus 1 via a data transmission cable 3 having, for example, the RS-232C cable configuration. More specifically, a CPU 21 of the host computer 2 shown in FIG. 2 is connected to the CPU 15 of the measuring apparatus 1 via an I/O circuit 22 in the host computer 2, the transmission cable 3, and the I/O circuit 18 in the measuring apparatus 1 (col. 4, lines 53-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention Rive to include the feature of Nguyen in order to permit the seller to disconnect the treating apparatus if a problem arises.

2. In claim 2, Rive discloses that should an inconsistency be detected at decision box 134, the content of the supported partition 54 is overwritten with the content of the mirror partition 58, so as to restore the "reference state", or original content, to the supported partition 54. The overwriting may be performed by "repair program" stored either within the supported partition 54, or a floppy disk inserted into the computer system or stored on a remote device coupled to the computer system via a network connection (col. 12, lines 40-52).

3. In claim 4, Rive discloses that if corruption from a modification, or any other fault, pertaining to the supported partition 54 is detected (e.g., automatically or by the user) at step 208, the provision of support may constitute an overwrite operation of the supported partition 54 with the content of the mirror partition 58 so as to restore the reference state to the supported partition 54 wherein steps 208 and 210 may manually

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be performed by a user on-site, may manually be performed by a support service either on-site or remotely via a network connection, or may be fully automated utilizing software installed on the computer system 50 of the end user (col. 15, lines 35-46).

4. In claim 9, Rive discloses that updating of the supported partition 54 may be done remotely and with respect to a computer system 50 that is already in possession of the end user. Alternatively, the support service may configure a new computer system 50 to include a supported partition 54 having the content desired by the end user, and then replace the computer system 50 that is in possession of the end user with a newly configured computer system 50 (col. 17, lines 13-34).

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rive in view of Nguyen (Patent Number 6,556,894) in further view of Davis et al. (Patent Number 6,381,343).

5. In claims 10 and 11, Rive discloses in FIG. 14, a video display unit 410 and an alpha numeric device 412 (e.g., a keyboard) col. 20, lines 9-22). Rive discloses that the end user may have purchased a computer system outright, and may pay a monthly subscription fee for only various applications installed on the computer system as well as for technical support on a month to month basis; the end user may pay a periodic lease and subscription fee to the provider for the lease (or rental) of the computer equipment, the applications installed thereon, and technical support for both the computer system hardware and the installed application software; or the end user may pay an up-front lump-sum payment for the computer hardware and/or the applications, and pay a reduced subscription fee for technical support with respect to the computer system and installed software. Rive further discloses that various permutations and combinations of the above-described schemes may be implemented in performance of the step 268 (col. 18, lines 30-49).

Rive does not disclose an accounting means installed at a seller's side. Davis et al. discloses that the system can track other characteristics of the session for such purposes as accounting. It would have been obvious to modify the method of Rive to include the accounting feature of Davis et al. to maintain a better tracking of usage fees.

6. In claim 12, Rive discloses that if corruption from a modification, or any other fault, pertaining to the supported partition 54 is detected (e.g., automatically or by the user) at step 208, the provision of support may constitute an overwrite operation of the supported partition 54 with the content of the mirror partition 58 so as to restore the reference state to the supported partition 54 wherein steps 208 and 210 may manually be performed by a user on-site, may manually be performed by a support service either on-site or remotely via a network connection, or may be fully automated utilizing

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software installed on the computer system 50 of the end user (col. 15, lines 35-46). Rive further discloses that the corrective operation can be performed remotely, for example using a network communications over a network (e.g., the Internet) by a support service. To this end, a remote support service may establish a network connection to the computer system 50 (e.g., a TCP/IP connection via a dialup or DSL modem) and communicate with a client application program installed on the computer system to remotely take control of operations of the computer system 50 (col. 11, lines 55-63).

7. In claims 13-15, Rive discloses that updating of the supported partition 54 may be done remotely and with respect to a computer system 50 that is already in possession of the end user. Alternatively, the support service may configure a new computer system 50 to include a supported partition 54 having the content desired by the end user, and then replace the computer system 50 that is in possession of the end user with a newly configured computer system 50 (col. 17, lines 13-34). Rive discloses that in one embodiment of the present invention where the computer system is leased, the computer system and the support provided at step 206 may be provided for a fixed monthly fee, or other periodic fee, or a one-time lump sum payment (col. 15, lines 23-32). Rive further discloses a method of configuring a storage device accessible by a computer system so as to facilitate the maintenance and verification of the integrity and operation of the computer system, and to a business method of supporting a computer system so configured (col. 1, lines 14-20).

### ***Response to Amendment and Arguments***

Applicant's arguments filed 09/26/2005 have been fully considered but they are not persuasive.

As for applicant's arguments that in claim 1, "the fee is calculated by the using time in view of the entire cost. Thus, the treating apparatus is not leased, and the fee is changed by the using time of the treating apparatus" and in "Rive, the system is a lease or other periodic fee, which is not based on the using time of the apparatus". The applicant submitted drawings which show in FIG. 5(b), a leasing company. According to Askoxford.com, lease means a contract by which one party conveys land, property, services, etc. to another for a specified time, in

return for payment; and according to Dictionary.law.com, lease is a written agreement in which the owner of property (either real estate or some object like an automobile) allows use of the property for a specified period of time (term) for specific periodic payments (rent), and other terms and conditions. Therefore, the examiner asserts that a lease is based on the using time.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

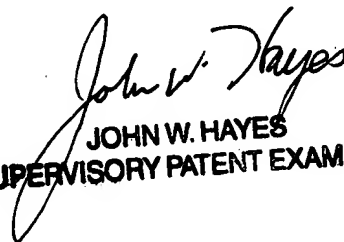


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10/17/05



JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER